IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6975 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRATAPSINH R JADEJA

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR M.A. BUKHARI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 19/04/2000

ORAL JUDGEMENT

Rule. Mr.M.A. Bukhari, learned AGP appears and waives service of notice of rule on behalf of the respondents. In the facts and circumstances, the matter is taken up

for final hearing today.

This petition is filed for an appropriate writ, direction or order quashing and setting aside the order passed by the District Magistrate, Kutch , respondent No.1, on 27th February, 1998 and confirmed by the State of Gujarat , respondent No.2, on July 13, 1999 and by directing the authorities to renew the licence of the petitioner.

The case of the petitioner was that he was granted licence of an arm (revolver) for self defence. In pursuance of the earlier order, period was to expire on December 21, 1996 and hence, an application for renewal of the licence was made by the petitioner. Additional District Magistrate who was to decide the application regarding renewal of licence rejected the prayer of the petitioner for renewal of licence inter alia on the ground that it was true that in the two cases which were registered against the petitioner, being CR No. 83 of 1996 registered for offences punishable under Sections 323, 504 and 506 IPC as also Chapter case No.81 of 1996, he was acquitted, however, another case being CR No. 104 of 197 for offence punishable under Section 338, IPC was pending. He,therefore, was of the view that in the light of pendency of CR No.104 of 1997, prayer of the petitioner to renew the licence cannot be granted. Accordingly, the application came to be rejected.

Being aggrieved by the order passed by the licensing authority, the petitioner preferred an appeal before the State Government. It was the case of the petitioner that during the pendency of the appeal before the State Government, petitioner was also acquitted in CR No.104 of 1997 by the competent court. He,therefore, drew the attention of the State Government that the fact on which reliance was placed by the licensing authority for non-renewal of licence i.e. pendency of CR No. 104 of 1997 was also not available to the authority and that,therefore, his application for renewal was required to be granted inasmuch as even in CR No.104 of 1997, he was acquitted. State Government, under the impugned order, observed that it was true that the petitioner was acquitted in CR No.104 of 1997 by the competent court. It was, however, observed therein that one more case was registered against the petitioner being CR No. 42 of 1997 punishable under Section 325, 506 (2) read with section 114 of the IPC. In view of the said fact, State Government did not consider it proper to renew the licence and accordingly, the appeal was dismissed.

In the petition, the petitioner has stated in grounds (D) and (E) as under :

(D) It is further submitted that with regard to CR No. 42/97 which is shown first time at the stage of appeal, the petitioner humbly states that the petitioner has no connection with this CR No. 42/97 .he is not accused of this CR number . No such offence is registered against the present petitioner and therefore, it clearly appears that the respondent No.2 has not applied its mind while passing the impugned order and therefore, the same is liable to be quashed and set aside.

(E) It is humbly submitted that the petitioner is not provided a reasonable opportunity of hearing at the appellate sage as the extraneous material has been considered by the appellate authority i.e. respondent No.2 by showing that one another offence being CR No.42 of 1997 punishable under Sections 325, 506 (2), 114 of the Indian Penal Code is registered against the petitioner. It is submitted that no such offence is registered against the present petitioner, he is not aware about such CR number and therefore, when such extraneous material is considered, it amounts to violation of principles of natural justice and therefore, also, the order of respondent No.2 is liable to be quashed and set aside."

Notice was issued by my learned brother M.S.Shah,J. on 27th October, 1999. I have issued rule and heard the parties.

It was contended by Mr. Lakhani for the petitioner that the petitioner came to be acquitted in both cases viz., CR No. 83 of 1996 and Chapter case No. 81 of 1996 and that fact was very much before the licensing authority when his application for renewal was decided. The licensing authority ,however, took into account another case being CR No. 104 of 1997. He stated that when the appeal was heard by the State Government, even in the second case, the petitioner was acquitted but the State Government took into account the fact that the petitioner was involved in CR No.42 of 1997. From the above two grounds, it is clear that the case of the petitioner is

that he is in no way connected with CR No. 42 of 1997. No affidavit in reply is filed to the petition. But the main thing is that when the appellate authority relies on the fact that some case is registered against the petitioner, principles of natural justice require that he must be afforded an opportunity as to what he has to say in the matter. It was contended by the learned advocate for the petitioner, and in my opinion rightly, that the petitioner came to know about the fact that CR No. 42 of 1997 was relied upon for the purpose of non-renewal of the licence when the petitioner received the order impugned in the present petition . Obviously, this cannot be done. On that ground alone, the petition deserves to be allowed.

For the foregoing reasons, the petition is allowed. The order passed by the State Government is quashed and set aside and the matter is remanded to the State Government for reconsidering it in accordance with law. If the State Government is of the opinion that any case is pending against the petitioner, it will afford an opportunity of hearing to the petitioner and pass appropriate order in accordance with law. Since the prayer is regarding renewal of licence which was already granted in favour of the petitioner since long, the appellate authority will decide the appeal as expeditiously as possible preferably within eight weeks from the receipt of the writ. During the pendency of the appeal, an order of confiscation of the arm will not be insisted upon. Rule is made absolute to the aforesaid extent. No order to costs.

--

parekh